



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 5919-99

30 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by Headquarters, Marine Corps dated 3 February 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070

JAM3

03 FEB 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF [REDACTED]
0905/0311 U.S. MARINE CORPS

1. We are asked to provide an opinion on Petitioner's request to remove from his Official Military Personnel File (OMPF) of the nonjudicial punishment (NJP) he received on 11 January 1999.

2. We recommend that the requested relief be denied. Our analysis follows.

3. Background. On 11 January 1999, Petitioner was punished at NJP for violation of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ). He was awarded reduction to E-2, forfeiture of \$537.00 per month for 2 months, and 30 days restriction. He did not appeal the punishment. On 25 May 1999, Petitioner was processed for administrative separation due to misconduct, specifically, drug abuse. The board found that the basis for separation was not supported by a preponderance of the evidence, and recommended that Petitioner be retained in the Marine Corps. On 8 September 1999, Petitioner requested that the NJP authority set the NJP aside based on the board results. The request was denied. Petitioner now contends that the NJP was unjust in light of the administrative discharge board's findings.

4. Analysis

a. Petitioner's argument is without merit. The record of NJP is correct in form and suggests no irregularity in the proceeding itself. The punishment imposed was authorized based on the grade of the officer who imposed it, and a review of the record does not suggest that the NJP authority abused his discretion.

b. The NJP proceeding and the administrative discharge board proceeding were two separate hearings conducted by separate fact-finders for different reasons. Each may have also considered different evidence. The NJP authority's findings were not binding on the administrative board, and the administrative board's findings did not impeach the NJP finding.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF [REDACTED]
[REDACTED] U.S. MARINE CORPS

5. Conclusion. For the reasons noted, we recommend that the requested relief be denied.

M. W. Fisher, Jr.

M. W. FISHER, JR.
Head, Military Law Branch
Judge Advocate Division